



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Arlene Kelley
3023 Dartmouth College Highway
North Haverhill, NH 03774

Re: 99 Smith Bridge Road, Plymouth, NH

ADMINISTRATIVE ORDER
No. WMD 04-08

July 9, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Arlene Kelley pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Arlene Kelley is an individual having a mailing address of 3023 Dartmouth College Highway, North Haverhill, NH 03774.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Arlene Kelley and James Kelley are the record owners of land at 99 Smith Bridge Road, Plymouth, NH, more particularly described in a deed recorded in the Grafton County Registry of Deeds at Book 1155, Page 195, and identified on Plymouth Tax Map 0002 as Lot 0007-0006 ("the Site"). Based on information received, DES believes that Mr. Kelley is deceased.
4. On October 8, 1999, DES received a complaint from the New Hampshire Department of Transportation alleging that junk automobiles had been buried in conjunction with an auto salvage yard operation at the Site. The complaint also alleges that drums of hazardous waste were leaking at the Site.

5. On November 5, 1999, DES personnel investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine Arlene Kelley's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules. No one was present at the time of the Inspection.
6. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.
7. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."
8. During the Inspection, DES personnel observed approximately 31 drums (some of the drums were not accessible), some with contents, near the blue/green trailer at the Site. The drums were not labeled. One drum was open and appeared to contain a thick, dark, liquid, possibly used oil. DES personnel placed a cover over the open drum.
9. Arlene Kelley is a generator of hazardous waste as defined by RSA 147-A:2, VI
10. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
11. During the Inspection, DES personnel observed the following in regards to hazardous waste determinations:
 - a. One unlabeled, sealed 5-gallon plastic container in a yellow storage trailer.
 - b. One 55-gallon drum, approximately 1/3 full, with unknown contents at the edge of the wetlands.
 - c. An open gas tank with contents. DES personnel covered the opening with a piece of metal.
 - d. A cluster of fourteen 55-gallon drums, thirteen of which had contents with no labels.
 - e. Two 5-gallon pails and a 20-gallon drum with unknown contents next to the cluster of drums identified in d. above.
12. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."
13. During the Inspection, DES personnel observed an area of stained soil, approximately three feet by three feet, next to the containers identified in paragraph C.11.d. DES personnel noted a strong petroleum odor in this area.
14. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
15. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the

demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

16. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

17. During the Inspection, DES personnel observed the following:

- a. A collapsed storage trailer which contained approximately 12 truck tires and wood debris;
- b. A yellow storage trailer which contained cardboard, as well as several scrap tires scattered next to the trailer;
- c. Approximately 80 cubic yards of debris consisting of aluminum siding, empty 5-gallon pails, weathered cardboard, a blue vehicle hood, pipe, an empty 55-gallon drum, a red metal folding chair, approximately 12 scrap tires, car seats, metal, building debris, newspaper, a red car door, and a black plastic hose.
- d. Scrap tires scattered along the edge of the wetlands;
- e. Approximately 20 empty 5-gallon plastic containers;
- f. A pile of wood pallets;
- g. A damaged white house trailer with blue and green trim;
- h. A pile of demolition debris, car seats, and automobile parts;
- i. A pile of crushed gas tanks;
- j. Two empty 5,000-gallon underground storage tank and one empty 275-gallon tank;
- k. Several piles of scrap metal, including tin roofing;
- l. A damaged green house trailer;
- m. A damaged blue and green trailer;
- n. A collapsed house trailer with scrap tires; and
- o. Greater than 10,000 tires scattered around the Site.

18. The scrap tires, scrap metal, aluminum siding, empty 5-gallon pails, weathered cardboard, a blue vehicle hood, pipe, an empty 55-gallon drum, a red metal folding chair, car seats, metal, construction and demolition debris, newspaper, red car door, black plastic hose, uninhabitable trailers, empty containers, and empty tanks observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

19. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

20. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX

21. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."

22. Ms. Kelley is the owner of a solid waste facility.

23. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

24. A review of DES files shows that Ms. Kelley has not applied for or received a permit to operate a solid waste facility at any New Hampshire location.

25. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

26. The tires observed during the Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

27. By letter dated January 13, 2000, DES personnel informed Ms. Kelley about the hazardous waste and solid waste issues observed at the Site.

28. On January 19, 2000, Michael Kelley ("Mr. Kelley"), who identified himself as Ms. Kelley's son, contacted DES personnel in regards to the January 13, 2000 letter. Mr. Kelley informed DES personnel that his father had passed away and that there has been no activity at the Site since that time. DES personnel discussed their concerns about the solid waste and hazardous waste at the Site. Mr. Kelley stated he would speak to his brother about the issues at the Site.

29. On April 4, 2000, DES personnel conducted a follow-up inspection of the Site. No changes were noted since the Inspection.

30. On April 11, 2000, DES personnel contacted Mr. Kelley. Mr. Kelley informed DES personnel that his brother has been to the Site and capped all the open containers at the Site.

31. On November 8, 2000, DES personnel conducted a second follow-up inspection of the Site. No changes were observed at the Site since the previous inspection conducted on April 4, 2000.

32. On June 5, 2001, DES personnel conducted a follow-up inspection of the Site. DES personnel observed the following:

- a. The drums with contents had been sealed and moved into the garage on Site. The drums were not labeled.
- b. One of the drums was bulging at the bottom and appears to have leaked a dark oily type substance.
- c. Stained soil near the trailer, where the drums identified in paragraph C.11.d had been previously staged. DES personnel noted a slight petroleum odor.
- d. DES personnel observed additional stained soil near the wooden fence at the back of the Site where the containers identified in paragraph C.8 had been previously staged.

33. By letter dated June 15, 2001, DES personnel informed Mr. Kelley about the additional areas of stained soil. DES requested that Mr. Kelley contact DES with a clean-up schedule for the Site. DES personnel also sent Mr. Kelley a list of hazardous waste transporters, a list of collection services for scrap tires, and a Scrap Tire Management Fact Sheet.

34. On August 14, 2001, DES personnel conducted a follow-up inspection of the Site. DES personnel observed that the staining underneath the drums in the garage had extended. No other changes were noted at the Site since the inspection conducted on June 5, 2001.

35. On September 7, 2001, DES personnel contacted Mr. Kelley. DES reviewed the issues at the Site which needed to be addressed, specifically place the scrap tires into conforming piles, address the containers of waste, and the areas of stained soil.

36. On November 14, 2001, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on August 14, 2001.

37. On February 26, 2002, DES personnel conducted a follow-up inspection at the Site area was covered in snow and there was no evidence of activity at the Site.

38. On May 6, 2002, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on February 26, 2002.

39. On May 15, 2002, DES personnel contacted Mr. Kelley. Mr. Kelley informed DES personnel that he believed that his brother had taken care of the drums at the Site.

40. On October 24, 2002, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on May 6, 2002.

41. On October 25, 2002, DES personnel contacted Mr. Kelley and advised him that DES personnel conducted a follow-up inspection of the Site on October 25, 2002, and DES personnel observed no change at the Site since the previous inspection conducted on May 6, 2002.

42. On May 13, 2003, DES personnel conducted a follow-up inspection at the Site. DES personnel observed that the contents of the drums had been removed. No other changes were observed at the Site since the previous inspection conducted on October 25, 2002.

43. On July 8, 2003, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on May 13, 2003.

44. On July 22, 2003, DES personnel contacted Mr. Kelley. DES requested that Mr. Kelley provide disposal receipts for the drums of waste which had been removed from the Site. Mr. Kelley stated he would contact his brother regarding this issue. DES personnel advised Mr. Kelley that other issues remain at the Site which need to be addressed.

45. On August 28, 2003, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on July 22, 2003.

46. On November 18, 2003, DES personnel conducted a follow-up inspection at the Site. No changes were observed at the Site since the previous inspection conducted on August 28, 2003.

47. On April 16, 2004, DES personnel conducted a follow-up inspection at the Site. The purpose of the inspection was to attempt to calculate the amount of tires at the Site. DES personnel estimate that there are approximately 35,000 scrap tires at the Site. No other changes were observed at the Site since the previous inspection conducted on November 18, 2003.

D. DETERMINATION OF VIOLATIONS

1. Arlene Kelley has violated RSA 149-M:9, I by operating an unpermitted solid waste facility
2. Arlene Kelley has violated Env-Wm 502.01 by failing to adequately determine if its waste is a hazardous waste.
3. Arlene Kelley has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
4. Arlene Kelley has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Arlene Kelley as follows:

Immediately cease operating an unpermitted facility.

2. **Within 60 days** of receipt of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste and stained soil at the Site. Include as part of the Scope of Work a schedule, which details when the work will be done. The Scope of Work shall be prepared by a qualified environmental consultant and determine the nature and extent of contamination from discharges to the environment. The Scope of Work when implemented must provide for the clean-up of waste that has been released. This evaluation will need to include an investigation to determine if, and to what extent, the discharges have impacted the soil and groundwater at the Site.

3. **Within 20 days** of receipt of this Order, submit a written status report identifying the consultant required by item E.2 and provide documentation that certifies the consultant has been retained.

4. If as a result of the investigation required by E.2, above, **within 30 days** of the determination that the soil or the groundwater shows a violation of the cleanup standards as detailed in the Contaminated Sites Risk Characterization and Management Policy dated January 1998, initiate activities to satisfy the requirements of the policy.

5. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste and stained soil at the Site to a facility or facilities permitted to accept such wastes.

6. **Within 20 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.

7. **By August 15, 2004**, provide copies of disposal receipts for the drums of waste removed from the Site.

8. Submit **monthly** written status reports to DES certifying that corrective measures have been implemented in accordance with the approved Scope of Work. Submit the first report within thirty (30) calendar days of the date of this Order and continue on a monthly basis until all work is complete. The final report shall certify that compliance has been achieved. Include in each report supporting documentation (disposal receipts, photographs, etc.) describing those measures taken to achieve compliance during the reporting period, together with copies of any written plans or proceedings developed.

9. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2456
e-mail: cmcgary@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Arlene Kelley of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Arlene Kelley remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Arlene Kelley's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the New Hampshire Department of Environmental Services, Oil Remediation and Compliance Bureau, for investigation of possible violations of RSA 146-A.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.



COPY
Anthony P. Giunta, P.G., Director
Waste Management Division



COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 700 1670 0000 0584 3281

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